STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
GENERAL COUNSEL

Troopers Lodge No. 41,	)	
	)	
Labor Organization	)	
	)	Case No. S-DR-14-004
and	)	
	)	
Illinois Department of State Police,	)	
	)	
Employer	)	

DECLARATORY RULING

On April 14, 2014, Troopers Lodge No. 41 (Lodge or Union) filed a unilateral Petition for Declaratory Ruling pursuant to Section 1200.143 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240. The Union requests a determination as to whether health care premiums and related costs are mandatory subjects of bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act or IPLRA). Both the Petitioner and the named Employer, Illinois Department of State Police (ISP), filed briefs.[1]

I. Background

The Union is the exclusive bargaining representative of a bargaining unit of State Police Officers below the rank of Master Sergeant, employed jointly by ISP and the Illinois Department

[1] I deny the Employer's request for oral argument because Section 1200.143 of the Board's rules call for expeditious issuance of declaratory rulings. I have previously granted the Employer three extensions of time to file its brief. Indeed, although Board rules require opposing parties to file briefs within ten days after service of the petition by the Board, here the Petitioner served its petition directly on the Employer on May 30, 2014, and the Employer did not file its brief until May 27, 2014. It did not request oral argument until it filed its brief. It had adequate time to fully present its position in its brief, and arranging for oral argument at this late date would cause additional delay with no appreciable increase in opportunity for the parties to articulate their positions.

of Central Management Services (CMS). [2] The most recent collective bargaining agreement for that unit is between ISP and the Union. It has an expiration date of June 30, 2012. In relevant part, the collective bargaining agreement provides that during the term of the agreement, the "Department shall continue in effect for all eligible employees and their eligible dependents, the benefits, rights and obligations of group health, life and other insurance under such terms and at such rates as are made available by the Director of Central Management Services pursuant to the State Employees Group Insurance Act except as modified during the term hereof by agreement of the parties."

On April 30, 2012, prior to the expiration of the collective bargaining agreement, the Union made a request to the Board for mediation under Section 14(j) of the Act, which triggered the commencement of interest arbitration proceedings.

On May 23, 2013, the Union was informed of changes to the insurance program covering bargaining unit members which were to be effective as early as July 1, 2013.

On June 2, 2013, the ISP and the Union entered into a "Contract Extension Agreement" in which the parties agreed to "extend the terms of the current collective bargaining agreement ... while engaged in good faith bargaining" for a successor agreement.

On June 20, 2013, the Union filed an unfair labor practice charge in Case No. S-CA-13-148 which alleged that ISP violated Section 10(a)(4) of the Act when it unilaterally implemented health care plan changes and thereby refused to bargain in good faith over the costs of health care. The Union also claimed that the Employer violated Section 14(l) of the Act when it changed the status quo during the pendency of interest arbitration proceedings.

[2] The Certification of Representative for the S-RC-164 unit lists both ISP and CMS as employers.

On July 1, 2013, CMS implemented changes to the insurance program which covers bargaining unit members. Shortly thereafter, the Union filed a grievance alleging that ISP breached the collective bargaining agreement when it unilaterally implemented changes to bargaining unit members' insurance benefits and thereby "failed to continue in effect for all eligible employees and their eligible dependents, the benefits, rights and obligations of group health, life or other insurance," as required by the extension agreement.

On December 31, 2013, the Board's Executive Director deferred the unfair labor practice charge to the parties' grievance procedure. The dismissal lists the Respondent as the State of Illinois, Department of Central Management Services (State Police).

On January 6, 2014, the Union's grievance proceeded to arbitration. The grievance arbitrator has not yet issued his award.

The parties' chosen interest arbitrator has not completed the hearing to resolve the terms of the successor agreement.

II. Relevant Statutory Provisions

The duty to bargain is defined in Section 7 of the Act, which provides in relevant part:

> A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section.
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> For the purpose of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
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> The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically

> provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty "to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.
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> 5 ILCS 315/7 (2012)

Section 15(a) of the Act provides, in relevant part:

> In case of any conflict between the provisions of this Act and any other law (other than Section 5 of the State Employees Group Insurance Act of 1971 and other than the changes made to the Illinois Pension Code by this amendatory Act of the 96th General Assembly), executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control.
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> 5 ILCS 315/15(a) (2012)

Section 5 of the State Employees Group Insurance Act of 1971 provides the following:

> § 5. Employee benefits; declaration of State policy. The General Assembly declares that it is the policy of the State and in the best interest of the State to assure quality benefits to members and their dependents under this Act. The implementation of this policy depends upon, among other things, stability and continuity of coverage, care, and services under benefit programs for members and their dependents. Specifically, but without limitation, members should have continued access, on substantially similar terms and conditions, to trusted family health care providers with whom they have developed long-term relationships through a benefit program under this Act. Therefore, the Director must administer this Act consistent with that State policy, but may consider affordability, cost of coverage and care, and competition among health insurers and providers. All contracts for provision of employee benefits, including those portions of any proposed collective bargaining agreement that would require implementation through contracts entered into under this Act, are subject to the following requirements:
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> (i) By April 1 of each year, the Director must report and provide information to the Commission concerning the status of the employee benefits program to be offered for the next fiscal year. Information includes, but is not limited to, documents, reports of negotiations, bid invitations, requests for proposals, specifications, copies of proposed and final contracts or agreements, and any other materials concerning contracts or agreements for the employee benefits program. By the first of each month thereafter, the Director must provide updated, and any new, information to the Commission until the employee benefits program for the next fiscal year is determined. In addition to these

monthly reporting requirements, at any time the Commission makes a written request, the Director must promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission any additional requested information in the possession of the Director concerning employee benefits programs. The Commission may waive any of the reporting requirements of this item (i) upon the written request by the Director. Any waiver granted under this item (i) must be in writing. Nothing in this item is intended to abrogate any attorney-client privilege.

(ii) Within 30 days after notice of the awarding or letting of a contract has appeared in the Illinois Procurement Bulletin in accordance with subsection (b) of Section 15-25 of the Illinois Procurement Code, the Commission may request in writing from the Director and the Director shall promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission information in the possession of the Director concerning the proposed contract. Nothing in this item is intended to waive or abrogate any privilege or right of confidentiality authorized by law.

(iii) Except as otherwise provided in this item (iii), no contract subject to this Section may be entered into until the 30-day period described in item (ii) has expired, unless the Director requests in writing that the Commission waive the period and the Commission grants the waiver in writing. This item (iii) does not apply to any contract entered into after the effective date of this amendatory Act of the 98th General Assembly and through January 1, 2014 to provide a program of group health benefits for Medicare-primary members and their Medicare-primary dependents that is comparable in stability and continuity of coverage, care, and services to the program of health benefits offered to other members and their dependents under this Act.

(iv) If the Director seeks to make any substantive modification to any provision of a proposed contract after it is submitted to the Commission in accordance with item (ii), the modified contract shall be subject to the requirements of items (ii) and (iii) unless the Commission agrees, in writing, to a waiver of those requirements with respect to the modified contract.

(v) By the date of the beginning of the annual benefit choice period, the Director must transmit to the Commission a copy of each final contract or agreement for the employee benefits program to be offered for the next fiscal year. The annual benefit choice period for an employee benefits program must begin on May 1 of the fiscal year preceding the year for which the program is to be offered. If, however, in any such preceding fiscal year collective bargaining over employee benefit programs for the next fiscal year remains pending on April 15, the beginning date of the annual benefit choice period shall be not later than 15 days after ratification of the collective bargaining agreement.

(vi) The Director must provide the reports, information, and contracts required under items (i), (ii), (iv), and (v) by electronic or other means satisfactory to the Commission. Reports, information, and contracts in the possession of the Commission pursuant to items (i), (ii), (iv), and (v) are exempt from disclosure by the Commission and its

members and employees under the Freedom of Information Act. Reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) must be kept confidential by and may not be disclosed or used by the Commission or its members or employees if such disclosure or use could compromise the fairness or integrity of the procurement, bidding, or contract process. Commission meetings, or portions of Commission meetings, in which reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) are discussed must be closed if disclosure or use of the report or information could compromise the fairness or integrity of the procurement, bidding, or contract process.

All contracts entered into under this Section are subject to appropriation and shall comply with Section 20-60(b) of the Illinois Procurement Code (30 ILCS 500/20-60(b)).

The Director shall contract or otherwise make available group life insurance, health benefits and other employee benefits to eligible members and, where elected, their eligible dependents. Any contract or, if applicable, contracts or other arrangement for provision of benefits shall be on terms consistent with State policy and based on, but not limited to, such criteria as administrative cost, service capabilities of the carrier or other contractor and premiums, fees or charges as related to benefits.

Notwithstanding any other provisions of this Act, by January 1, 2014, the Department of Central Management Services, in consultation with and subject to the approval of the Chief Procurement Officer, shall contract or make otherwise available a program of group health benefits for Medicare-primary members and their Medicare-primary dependents. The Director may procure a single contract or multiple contracts that provide a program of group health benefits that is comparable in stability and continuity of coverage, care, and services to the program of health benefits offered to other members and their dependents under this Act. The initial procurement of a contract or contracts under this paragraph is not subject to the provisions of the Illinois Procurement Code, except for Sections 20-60, 20-65, 20-70, and 20-160 and Article 50 of that Code, provided that the Chief Procurement Officer may, in writing with justification, waive any certification required under Article 50.

The Director may prepare and issue specifications for group life insurance, health benefits, other employee benefits and administrative services for the purpose of receiving proposals from interested parties.

The Director is authorized to execute a contract, or contracts, for the programs of group life insurance, health benefits, other employee benefits and administrative services authorized by this Act (including, without limitation, prescription drug benefits). All of the benefits provided under this Act may be included in one or more contracts, or the benefits may be classified into different types with each type included under one or more similar contracts with the same or different companies.

> The term of any contract may not extend beyond 5 fiscal years. Upon recommendation of the Commission, the Director may exercise renewal options of the same contract for up to a period of 5 years. Any increases in premiums, fees or charges requested by a contractor whose contract may be renewed pursuant to a renewal option contained therein, must be justified on the basis of (1) audited experience data, (2) increases in the costs of health care services provided under the contract, (3) contractor performance, (4) increases in contractor responsibilities, or (5) any combination thereof.
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> Any contractor shall agree to abide by all requirements of this Act and Rules and Regulations promulgated and adopted thereto; to submit such information and data as may from time to time be deemed necessary by the Director for effective administration of the provisions of this Act and the programs established hereunder, and to fully cooperate in any audit.
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> 5 ILCS 375/5 (2012)

Section 7.1 of the State Employees Group Insurance Act of 1971 provides the following:

> Any benefit received by an employee under this Act pursuant to a collective bargaining agreement may be extended by the Director to employees whose wages, hours and other conditions of employment with the State are not subject to a collective bargaining agreement. In addition, if any benefit is offered by the Department of Central Management Services to employees who are not members of a recognized bargaining unit, then that benefit shall also be offered to all bargaining unit members through their certified exclusive representative.
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> 5 ILCS 375/7.1

III. Issues

At issue is whether the cost of health care benefits is a mandatory subject of bargaining. The Union maintains that ISP is required to bargain over this topic because it concerns employees' wages, hours, and terms and conditions of employment, and does not implicate matters of inherent managerial authority. In the alternative, the Union argues that the benefits of bargaining over health care costs outweigh the burdens that bargaining might impose on ISP's inherent managerial authority. Further, the Union asserts that Section 5 of the State Employees Group Insurance Act of 1971 (Group Insurance Act) does not preclude bargaining over health

insurance or limit bargaining unit members to the health insurance options provided by the State under that Act.

ISP asks the Board to hold this matter in abeyance until the grievance arbitrator issues a decision as to whether ISP breached the parties' contract when CMS unilaterally changed health insurance benefits during the term of the extension agreement. ISP reasons that the ultimate question to be decided by the grievance arbitrator is the same as the question before me, and that I should effectively defer the matter to the grievance arbitrator by waiting for his determination on the issue.

Next, ISP argues that it has no obligation to bargain over employees' health care costs because CMS determines those matters exclusively. It notes that CMS likewise has no duty to bargain over health care costs because its obligation under the Group Insurance Act is limited to offering bargaining unit members the health benefits it offers to unrepresented employees of the State.

In the alternative, ISP states it is not required to bargain health care costs because the Group Insurance Act preempts all conflicting provisions of the IPLRA under Section 15 of the IPLRA. Similarly, ISP asserts that Section 7 and Section 14(h) of the IPLRA relieve both CMS and ISP of any duty to bargain such matters.

Next, ISP asserts that determining the cost of state health insurance is an inherent management right under the second step of the analysis set out in Central City Educ. Ass'n v. Ill. Educ. Labor Relations Bd., 149 Ill. 2d 496 (1992), because the Director of CMS has the statutory duty and obligation to establish health insurance programs under the Group Insurance Act. ISP contends that it need not show that the authority to determine health care costs falls under one of

the management rights enunciated in Section 4 of the IPLRA because the Insurance Act preempts the IPLRA.

Finally, ISP argues that, at the third step of the Central City test, the burdens of bargaining health care far outweigh the benefits that bargaining could provide. According to ISP, the benefits of bargaining are minimal because ISP has no authority or control over the health insurance benefits offered by the Director of CMS through the Group Insurance Act.[3] ISP concludes that bargaining would burden the CMS Director's ability to fulfill his statutory obligation to provide stability and continuity of coverage, care and services, given the number of bargaining units (40) and unions (22) with which CMS must negotiate.

IV. Discussion and Analysis

a. Procedural Matters

I decline to hold this matter in abeyance pending the grievance arbitrator's decision concerning CMS's changes to the health insurance plan because deferral to the grievance arbitrator's expertise is neither required nor permitted in this case. To the extent that this case requires resolution of factual matters, they are properly referred to the interest arbitrator; remaining issues of law raised by the parties are addressed below.

There is no need for a grievance arbitrator's special expertise in this case because the matter before me is purely statutory. It requires a determination solely as to the parties' obligations to bargain over health care under the Illinois Public Labor Relations Act and the Group Insurance Act. The contract language in the parties' prior agreement (at issue before the arbitrator) has no bearing on the parties' duty to bargain a new agreement, at issue here. 80 Ill.

[3] ISP does not dispute the Union's assertion at the first step of Central City that health care costs affect employees' terms and conditions of employment.

Admin. Code 1200.143 (declaratory rulings concern the duty to bargain over a particular subject and shall not be issued concerning disputed factual issues); R.W. Page Corp., 219 NLRB 268, 270 (1975) (legal questions concerning the Act are within the special competence of the Board); Vill. of Bolingbrook, 20 PERI ¶ 139 (IL LRB-SP 2004) (no Dubo deferral of charge where case posed several questions about the effect of the new legislation upon the parties' bargaining obligations under the Act).

Further, there is no provision in the Board's rules that permits me to defer a declaratory ruling petition to a grievance arbitrator. I may defer the issuance of a declaratory ruling when the petition requires the resolution of disputed factual issues, but those disputed issues of fact must be referred to the interest arbitrator for determination and not a grievance arbitrator. 80 Ill. Admin. Code 1200.143 (b)(2).

In the instant case, ISP's control and authority over employees' health care costs are issues of fact, germane to the outcome of this petition, which are properly referred to the interest arbitrator for determination. State of Ill., (Dep't of Cent. Mgmt Serv.), 21 PERI ¶ 148 (IL LRB-SP 2005) (issuing complaint against Secretary of State alleging refusal to bargain health care, even though Secretary asserted that it had no ability and authority to negotiate such benefits). It is axiomatic that a duty to bargain is premised upon and presupposes employer power over the subject sought to be bargained. City of Cortland, 29 NYPER ¶ 3037 (NY PERB 1996) (employer had no duty to bargain over the creation or continuing maintenance of civil service lists or the scheduling of civil service examinations where those matters were within the jurisdiction of the appropriate civil service commission acting pursuant to requirements of the Civil Service Law). If ISP has no control over employee health care then it cannot be expected to bargain them with the union. Lamont's Apparel, Inc., 268 NLRB 1332 (1984) (employers

cannot be expected to bargain concerning third-party changes over which those employers have no control or influence).

Thus, I deny ISP's request to hold the petition in abeyance pending the outcome of the grievance arbitration. Though I refer disputed issues of fact concerning ISP's control over health care to the interest arbitrator's determination, I address CMS's duty to bargain below because both parties presented arguments on this issue and the matter may be resolved without fact finding.

b. Central City and the Group Insurance Act

The cost of health care benefits is a mandatory subject of bargaining under the Central City test, and the Group Insurance Act does not limit CMS's obligation to bargain health insurance costs with the Union in this case.

Pursuant to Section 7 of the IPLRA, parties are required to bargain collectively regarding employees' wages, hours, and other conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed'n of State, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353 (1988); Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259 (1st Dist. 1989); Ill. Dep't of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000); City of Mattoon, 13 PERI ¶ 2016 (IL SLRB 1997); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). The duty to bargain, of course, "does not compel either party to agree to a proposal or require the making of a concession." 5 ILCS 315/7 (2012). Moreover, Section 4 of the IPLRA provides that "[e]mployers shall not be required to bargain over matters of inherent managerial policy." 5 ILCS 315/4 (2012).

To resolve the tension between Section 7 and Section 4, the Illinois Supreme Court has established the three-part Central City test: First, ask whether the matter is one of wages, hours

and terms and conditions of employment. If the answer is "no," there is no duty to bargain. If the answer is "yes," the second step is to ask if the matter is also one of inherent managerial authority. If that answer is "no," there is a duty to bargain. If it is "yes," one must proceed to the third step and "balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining imposes on the employer's authority." Central City, 149 Ill. 2d at 523.

As a general matter, questions regarding employees' health insurance are mandatory subjects of bargaining because they affect employees' terms and conditions of employment and do not typically implicate matters of inherent managerial authority City of Kankakee (Kankakee Metropolitan Wastewater Utility), 9 PERI ¶ 2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991); see also, Georgetown-Ridge Farm Comm. Unit School Dist. 4, 7 PERI ¶ 1045 (IL ELRB H.O. 1991), aff'd, 7 PERI ¶ 1106 (IL ELRB 1991), aff'd, 239 Ill. App. 3d 438 (4th Dist. 1992); Vienna School Dist. No. 55, 3 PERI ¶ 1008 (IL ELRB 1986), aff'd, 162 Ill. App. 3d 503 (4th Dist. 1987). I find the amount employees are required to pay for health insurance affects their terms and conditions of employment because it directly relates to the employees' overall compensation. City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991) (finding that the term wages is given a broad construction which is read to include insurance); Fraternal Order of Police, 20 PERI ¶ 183 (IL LRB GC 2004); cf. Kanerva v. Weems, 2014 IL 115811 ¶49 (health insurance subsidies protected by constitutional provision protecting retirement benefits).

Although the cost to the employer of providing such benefits and the amount of that cost passed on to the employees has an increasingly large impact on the employer's budget, it is not a matter of the employer's "overall budget" within the meaning of Section 4. Nor for that matter is

it linked to one of the other subjects of inherent managerial authority listed in Section 4: the functions of the employer, standards of services, the organizational structure and selection of new employees, examination techniques and direction of employers. Cnty. of Cook v. Ill. Labor Rel. Bd. Local Panel, 347 Ill. App. 3d 538, 552 (1st Dist. 2004); Am. Fed. of State, Cnty., and Mun. Empl., AFL-CIO v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259 (1st Dist. 1989) (employee drug testing related to security, a matter of particular importance to Department of Corrections).

The existence of the Group Insurance Act does not alter the conclusion that the topic is not a matter of inherent managerial authority. It does not preclude bargaining over health care costs under Sections 15, 7, or 14(h) of the IPLRA. First, CMS is not excused from bargaining over health care costs under Section 15 of the IPLRA because Section 5 of the Group Insurance Act does not conflict with, and therefore does not take precedence over, the broad duty to bargain. Section 15 of the IPLRA provides that the Act generally takes precedence over any other law relating to terms and conditions of employment in the event of a conflict between the two. 5 ILCS 315/15 (2012). It additionally specifies that the Act does not take precedence in case of a conflict with Section 5 of the State Employees Group Insurance Act of 1971 or a conflict with changes made to the Illinois Pension Code by the amendatory Act of the 96th General Assembly. Id. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Cnty. of Cook v. Ill. Labor Rel. Bd., Local Panel, 347 Ill. App. 3d 538 (1st Dist. 2004); Kavanagh v. Cnty. of Will, 293 Ill. App. 3d 880 (3rd Dist. 1997); Vill. of Libertyville, 21 PERI ¶ 211 (IL LRB-SP 2005). To that end, the best indicator of the legislature's intent is the plain language of the statute itself. Id. Where statutory language is clear, one should not depart from its plain meaning by reading into it exceptions, limitations, or

conditions not expressed by the legislature. Cnty. of Cook v. Ill. Labor Rel. Bd., Local Panel, 347 Ill. App. 3d 538, 807 N.E.2d 613 (1st Dist. 2004), citing Gibbs v. Madison County Sheriff's Dep't, 326 Ill. App. 3d 473, 760 N.E.2d 1049 (5th Dist. 2001).

Section 5 of the Group Insurance Act does not expressly limit the duty to bargain over health care costs by prohibiting such negotiation. Cf. Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992) (no conflict found between Section 7 and Municipal Code where the Code did not expressly prohibit collective bargaining over promotional issues). Nor does Section 5 impliedly limit that duty by granting the Director the authority and obligation to enter into contracts for health insurance benefits, and setting forth the criteria the State must use to choose such contracts.[4] Id. (Code's grant of authority to the Fire and Police Commission to make rules concerning promotions did not prohibit collective bargaining over promotional matters, within the Commission's jurisdiction). In fact, Section 5 of the Group Insurance Act clearly contemplates collective bargaining in that it states: "All contracts for provision of employee benefits, *including those portions of any proposed collective bargaining agreement* that would require implementation through contracts entered into under this Act, are subject to the following requirements: ..." (emphasis supplied). The Employer cites no case law to support its proposition that the Group Insurance Act conflicts with the IPLRA in the absence of an affirmative mandate in the Group Insurance Act prohibiting CMS from negotiating over health care.[5]

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[4] These criteria include "administrative cost, service capabilities of the carrier or other contractor and premiums, fees or charges as related to benefits."

[5] The Employer also offers no alternative interpretation for the sentence I quote from Section 5 of the Insurance Act despite the fact that the Petitioner relies on that sentence. Although the Employer quotes extensively from Section 5, including the sentences that precede it, it simply leaves this sentence out of its quotation.

Furthermore, the legislature's deference to Section 5 of the Group Insurance Act, set forth in Section 15 of the ILPRA, does not show that the legislature intended to bar the State from bargaining over matters referenced in that provision. It is well established that, by employing certain language in one instance and wholly different language in another, the legislature indicates that different results were intended. In re K.C., 186 Ill. 2d 542, 549-50 (1999). Where the legislature has sought to expressly remove a topic from the duty to bargain, the legislature has done so in express terms. See 5 ILCS 315/7.5 (2012) (employers shall not be required to bargain over matters affected by ... the changes made to Article 14, 15, or 16 of the Illinois Pension Code".). Section 15, which gives precedence to Section 5 of the Group Insurance Act, does not contain such language. As such, it should not be read to bar bargaining over health care costs, despite the fact that the Group Insurance Act addresses health insurance.

Second, CMS is not excused from bargaining over health care under Section 7 of the IPLRA because health care is not a matter "specifically provided for" by the Group Insurance Act. Section 7 of the IPLRA provides in relevant part that parties must bargain over employees' terms and conditions of employment unless they are "specifically provided for in any other law." 5 ILCS 315/7 (2012). Nevertheless, laws pertaining to employees' terms and conditions of employment "shall not be construed as limiting the duty 'to bargain collectively'." Id. Rather parties are under an obligation to bargain over terms and conditions of employment which "supplement, implement, or relate to the effect of such provisions in other laws." Id. As such, the exception to the duty to bargain is construed to fully effectuate the public policy favoring collective bargaining. Am. Fed. of State Cnty. and Mun. Empl. v. Cook Cnty., 145 Ill. 2d 475 (1991); City of Decatur, 122 Ill. 2d 353 (1988). "[T]he mere existence of a statute on a subject does not, without more, remove that subject from the scope of the bargaining duty." City of

Decatur, 122 Ill. 2d 343 (1988); Vill. of Franklin Park, 8 PERI ¶ 2039 (IL SLRB 1992), aff'd, 265 Ill. App. 3d 997 (1st Dist. 1994).

Here, CMS's obligation under Section 7.1 of the Group Insurance Act, to offer bargaining unit employees any benefits offered to non-bargaining unit employees, does not bar the Union in this case from insisting on a level of benefits higher than those which the law requires CMS to propose. In fact, Section 7.1 establishes a minimum level of benefits which CMS, as a bargaining employer, must incorporate into its health care bargaining proposals. Such an interpretation is well supported by the statutory language of that section. First, that language does not prohibit CMS from conferring greater benefits upon bargaining unit members than those granted to non-bargaining unit members. Indeed, it contemplates that CMS might in fact do so by conversely permitting CMS to offer non-union employees those benefits which it conferred upon bargaining unit members pursuant to a collective bargaining agreement, necessarily reached through collective bargaining. See City of Decatur, 122 Ill. 2d at 364 (noting that a statute concerning a mandatory subject of bargaining, which establishes minimum benefits, does not bar union from bargaining for, and insisting on, a level of benefits higher than that required by law). As such, the Group Insurance Act is harmonious with Section 7 of the IPLRA because it contemplates a give and take between labor and management concerning health care costs.

The Board's decision in Illinois Secretary of State, 21 PERI ¶ 148 (IL LRB-SP 2005), does not alter this conclusion because CMS's statutory duties are broader in this case, where CMS's relationship to the represented employees is different. In Illinois Secretary of State, CMS had no duty to bargain over health care benefits with SEIU because CMS was not the employer of SEIU-represented Secretary of State employees—there was no certification of representative

which listed CMS as an employer and there was no history of collective bargaining between SEIU and CMS concerning those employees that might otherwise justify such a conclusion.[6] Id. In the absence of a duty to bargain, the Board held that CMS's duty to SEIU-represented Secretary of State employees was "limited to offering [employees], through [their exclusive representative], the health benefits it offers to all ... unrepresented employees of the State," as required under the Group Insurance Act. Id. Here, by contrast, CMS has a duty to bargain with the Union under Section 7 of the IPLRA because CMS is an employer of Union-represented ISP employees, as demonstrated by the Board's certification of representative covering this unit.[7] Consequently, CMS's duty toward the Union and its members is not limited to offering them the minimum requirements set forth in the Group Insurance Act, and the Board's holding in State of Illinois, premised on CMS's status as a non-employer, does not apply here.

In summary, although the Group Insurance Act does require the Director of one of the joint employers, the Department of Central Management Services, to establish a Group Insurance Plan, the Group Insurance Act clearly contemplates the presence of collective bargaining on this topic. Consequently, the Group Insurance Act does not preclude bargaining over health care nor render health benefits and its costs a matter of inherent managerial authority within the meaning of Section 4 of the IPLRA.

Even if I were to find the topic to be a matter of inherent managerial authority, I would still conclude that it was a mandatory subject of bargaining at the third step of the Central City analysis. I recognize that the range of potential benefit from bargaining is here curtailed by the fact that Section 5 of the Group Insurance Act prohibits CMS from providing the employees in

[6] The Board considered historical pattern of bargaining in that case because SEIU argued its lack of a Board-issued certification with regard to CMS was irrelevant as it represented a historical unit.
[7] As previously noted, the Certification of Representative lists both CMS and ISP as employers.

this bargaining unit lesser benefits than those offered employees not covered by collective bargaining, but there remains significant room for bargaining and the general topic is largely one of economics which is particularly amenable to bargaining. Cnty. of St. Clair and Sheriff of St. Clair Cnty., 28 PERI ¶ 18 (IL LRB-SP 2011), aff'd by unpub. order, 2012 IL App (5th) 110317-U; Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010), aff'd by unpub. order, 2012 IL App (1st) 110284-U.

I also recognize the difficulty of bargaining the topic of health benefits, and that the difficulty is compounded for CMS in that the State has a large number of employees, numerous collective bargaining units, and numerous bargaining unit representatives; however, the task is not to evaluate the burdens of bargaining in some general sense, but the burdens that bargaining would impose upon the employer's authority. Central City, 149 Ill. 2d at 523. Again, I take my lead from the Group Insurance Act which clearly contemplates that there will be collective bargaining on this topic. Consequently, I conclude that, as is generally the case, the benefits of bargaining over health care outweigh the burdens that bargaining would impose on CMS's authority.

In light of the analysis set forth above, Section 14(h) of the Act does not render permissive an otherwise mandatory subject of bargaining. Section 14(h) provides that the interest arbitration panel must consider the lawful authority of the employer, among other factors, in fashioning a collective bargaining agreement. Yet, that provision does not preclude the arbitrator from considering the parties' proposals on health care where the IPLRA's duty to bargain does not conflict with Section 5 of the Group Insurance Act.

In sum, the cost of health care benefits is a mandatory subject of bargaining under the Central City test, and the Group Insurance Act does not preclude CMS from bargaining with the

Union over that topic. Whether the named employer—ISP—has authority to bargain on this topic raises a factual issue which I refer to the interest arbitrator.

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STATE OF ILLINOIS
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Jerald S. Post
General Counsel